

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 976/2024

Col Ashish Jaiswal (Retd)	Applicant
Versus		
Union of India and Ors.	Respondents

For Applicant	:	Mr. Shakti Chand Jaidwal, Advocate
For Respondents	:	Mr. Waize Ali Noor, Advocate

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HON'BLE MS. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

Dated: 23rd February, 2026

ORDER

The challenge in the present OA, filed under Section 14 of the Armed Forces Tribunal Act, 2007, is to an order dated 14th July, 2023 (**Annexure A1**), whereby the first appeal preferred by the applicant against the rejection of his disability element claim was dismissed on the ground that the disability of PIVD L5–S1 (M-51) is neither attributable to nor aggravated by military service, it being outside the purview of Rules 6, 10 and 11 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, read with Para 51, Chapter VI of GMO 2002 (as amended in 2008). The reliefs sought by the applicant are reproduced below:

- (a) *Set aside the impugned order dated 14.07.2023 passed by the respondents rejecting first appeal of the applicant for grant of disability pension, despite his disability having been conceded as “Aggravated due to Stress and Strain in Service” by the Release Medical Board.*
- (b) *Direct the respondents to accept disability of the applicant namely “PIVD L5-S1 (M-51)” as “Aggravated due to Stress and Strain in Service” as conceded and recommended by the Release Medical Board.*
- (c) *Direct the respondents to grant disability pension to the applicant @ 20% for life w.e.f 18.09.2022 as degree of his disablement due to the said disability has been assessed @ 20% for life by the RMB.*
- (d) *Direct the respondents to pay disability pension to the applicant at enhanced rate of 50% for life w.e.f 18.09.2022 by broad banding his disability from 20% to 50% as per Govt. Policy dated 31.01.2001.*
- (e) *Direct the respondents to pay to the applicant an interest @ 10% p.a on arrears of the disability pension w.e.f 18.09.2022 and/or*
- (f) *Pass such other order/direction as may be deemed appropriate in the facts and circumstances of the case.*

2. The applicant was commissioned into the Indian Army on 13th June, 1998, with no note of any disease or disability recorded at the time of his entry. Stress and strain of military service under adverse operational conditions, as submitted by the applicant, are held to be the main cause of onset of his disability PIVD L5–S1 (M-51) in 2019 which was conceded as aggravated by service by Re-Categorization Medical Board (IMB). As the disability adversely impacted his service duties, seeing limited career prospects in a low medical category and certain domestic compulsions, the applicant, after serving for

nearly 24 years, sought premature retirement, which was duly approved and the applicant prematurely retired from service on 17th September, 2022 in medical category S1H1A1P3(P)E1. The Release Medical Board (RMB) assessed the applicant's disability PIVD L5-S1 (M-51) at 20% for life conceding it as "Aggravated by Service" thereby, as contended, qualifying him for disability pension. However, his claim for disability pension was rejected by the respondents on 6th February, 2023 (**Annexure A5**). After rejection of his initial claim for disability pension and First Appeal, the applicant preferred a Second Appeal (**Annexure A7**), which was stated to be pending consideration on the date of filing of this OA.

3. The learned counsel for the applicant, at the outset, contended that the action of the respondents in denying disability pension to the applicant is wholly illegal and unsustainable, particularly in view of the fact that the RMB has assessed the applicant's disability PIVD L5-S1 (M-51) at 20% for life and categorically conceding it as "Aggravated by Service." It is submitted that at the time of commissioning in the Indian Army, the applicant was found to be medically and physically fit and no note to the contrary recording any disease or disability was made at that time. Learned counsel for the

applicant further contended that in terms of Rules 5, 9 and 14 of the Entitlement Rules, 2008, an army personnel is presumed to be in sound health at the entry level and if a disability or disease manifests during service, the onus lies on the respondents to prove that the disability is neither attributable to nor aggravated by service. Learned counsel further submitted that as the IMB and RMB have recorded a clear finding that the disability is aggravated by service, the order denying disability pension to the applicant is erroneous.

4. To substantiate his claim, learned counsel for the applicant has placed reliance on the judgments of the Hon'ble Supreme Court in the case of *Dharamvir Singh Vs. Union of India and Ors.* [(2013) 7 SCC 316] to contend that no note of any disability was recorded in the service documents of the applicant at the time of his entry into service, therefore the presumption is that any disability arisen during service is deemed to be attributable to or aggravated by military service. Placing reliance on the judgment in the case of *Union of India and Ors. Vs. Ram Avtar* [(2014) 6 SCC 1761], learned counsel for the applicant argues that he is also entitled to broad banding.

5. Referring to Regulation 53, learned counsel for the applicant further submitted that since the applicant prematurely retired in a low medical category and the disability being conceded as aggravated by service, the applicant is entitled to grant of disability pension. Therefore, the impugned order deserves to be set aside.

6. The learned counsel for the respondents on the other hand submitted that the disability PIVD L5-S1 (M-51) is a degenerative, age-related disease which cannot be attributed to military service. The rejection of disability pension is, therefore, justified. The learned counsel further contended that although the Medical Board has recorded the disability as “Aggravated by Service,” conclusion so arrived at is not binding on the competent pension sanctioning authority, which, in its own right, can independently examine whether the disability satisfies the criteria laid down under Rules 6, 10 and 11 of the Entitlement Rules, 2008. There is no specific incident or injury during service that can be cited as the cause of the applicant’s disability or its aggravation. Learned counsel further submitted that in the absence of availability of a clear and proximate causal connection with service, the disability cannot be treated as attributable to or aggravated by military service. Merely

because the disability manifested during service does not entitle the applicant to disability pension. Accordingly, the respondents claim that the applicant is not entitled to disability pension and the OA is liable to be dismissed.

7. Having heard learned counsel for the parties and considering the pleadings, documents placed on record and the submissions advanced by both sides, it cannot be denied that the applicant was commissioned in a medically fit condition without there being any note of any disease or disorder recorded at the time of entry. The material on record clearly establishes that the onset of the applicant's disability PIVD L5-S1 (M-51) occurred during his tenure in High Altitude Area, Sub Sector North, Ladakh, where the service conditions involve extreme climate, uneven terrain and prolonged physical stress. The IMB held on 8th September, 2021 and the RMB on 16th August, 2022 at MH Ahmedabad have decidedly concluded that the disability is "Aggravated by Service" and assessed it at 20% for life. The respondents have failed to produce either any contrary medical evidence or have furnished cogent reasons to disbelieve the expert medical opinion. The statutory presumption under Rule 14 of the Entitlement Rules, 2008, and the judgment in the case of *Dharamvir Singh*

(supra) that any disability manifesting during service is deemed attributable to or aggravated by service unless clearly rebutted goes in favour of the applicant.

8. We find that the rejection of the applicant's disability pension claim on the premise that the disability is neither attributable to nor aggravated by service, is in direct contradiction to the findings of the Medical Boards. Such administrative decisions cannot override the conclusions of duly constituted medical boards, particularly when no reasoned basis has been shown to doubt their opinion.

9. In these circumstances, we hold that the applicant is entitled to disability pension assessed at 20% for life to be broad banded to 50% in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of *Ram Avtar* (supra). Accordingly, the impugned order (**Annexure A1**) is set aside. The respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three months from the date of receipt of a copy of this order. Default shall invite interest on the arrears @ 6% per annum till the date of payment.

10. No order as costs.

11. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 23rd day of February, 2026.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

**(RASIKA CHAUBE)
MEMBER (A)**

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